IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA, v. JACK MORGAN BEAMON ET AL, Defendants.	Case No. 23SCS189192 The Hon. Kimberly Esmond Adams

MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE ADVANCEMENT PROJECT EDUCATION FUND, THE CENTER FOR CONSTITUTIONAL RIGHTS, FRED T. KOREMATSU CENTER FOR LAW AND EQUALITY, AND INDIVIDUAL CRIMINAL LAW AND CONSTITUTIONAL LAW SCHOLARS IN SUPPORT OF THE GENERAL AND SPECIAL DEMURRERS FILED BY DEFENDANTS BROOKE COURTEMANCHE, SONALI GUPTA, MARLON KAUTZ, SAVANNAH PATTERSON, AND ADELE MACLEAN

Amici, Advancement Project Education Fund, The Center for Constitutional Rights, the Fred T. Korematsu Center for Law and Equality, and Individual Criminal Law and Constitutional Law Scholars, hereby move this Court for leave to file an amicus brief in support of the general and special demurrers sought by Defendants Brooke Courtmanche, Sonali Gupta, Marlon Kautz, Savannah Patterson, and Adele Maclean. As explained in the attached brief, amici are non-profit organizations as well as Criminal Law and Constitutional Law Scholars. Amici have a strong interest in ensuring that criminal statutes are not interpreted in a manner that ignores bedrock mens rea requirements or threatens important First Amendment associational and

speech freedoms. Amici seek to assist this Court by offering their unique perspectives and experience regarding the consequences if this prosecution is permitted to continue.

Though there are no superior court rules governing amicus briefs, Ga. R. Sup. Ct. 23(3) and Ga. R. Ct. App. 26(b) specify that amicus curiae briefs may be filed with leave of Court. The superior courts of this state have a long history of allowing or requesting the assistance of non-parties amici curiae in matters. *See, e.g.*, *Village of North Atlanta v. Cook*, 219 Ga. 316, 321–22 (1963).

Conclusion

For the reasons set forth above, amici respectfully request that the Court grant leave to file the Amicus Brief attached hereto as Exhibit A, which urges the Court to grant Defendants' demurrer motions.

Respectfully submitted, this 10th day of October 2024.

/s/ Andrew Fleischman
Andrew Fleischman
Sessions & Fleischman, LLC
3155 Roswell Rd., Ste. 220
Atlanta, GA 30305
470- 225-7710
andrew@thesessionslawfirm.com

Counsel for Amici

/s/ Caitlin Glass
Caitlin Glass (pro hac pending)
ANTIRACISM AND COMMUNITY LAWYERING PRACTICUM
Boston University School of Law
765 Commonwealth Avenue
Boston, MA 02215
617-353-3131
glassc@bu.edu

Counsel for Amici

CERTIFICATE OF SERVICE

I hereby certify that I have electronically filed this **MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE ADVANCEMENT PROJECT EDUCATION FUND, THE CENTER FOR CONSTITUTIONAL RIGHTS, FRED T. KOREMATSU CENTER FOR LAW AND EQUALITY, AND INDIVIDUAL CRIMINAL LAW AND CONSTITUTIONAL LAW SCHOLARS IN SUPPORT OF THE GENERAL AND SPECIAL DEMURRERS FILED BY DEFENDANTS BROOKE COURTEMANCHE, SONALI GUPTA, MARLON KAUTZ, SAVANNAH PATTERSON, AND ADELE MACLEAN** using the ODYSSEY eFileGA system which will automatically send email notification of such filing to all attorneys and parties of record.

/s/ Andrew Fleischman
Andrew Fleischman
Sessions & Fleischman, LLC
3155 Roswell Rd., Ste. 220
Atlanta, GA 30305
470- 225-7710
andrew@thesessionslawfirm.com

Counsel for Amici

EXHIBIT A

IN THE SUPERIOR COURT OF FULTON COUNTY
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IDENTITY AND INTEREST OF AMICUS CURIAE

Amici write to raise concerns about the abuse of the Georgia RICO statute and the threat it poses to core First Amendment activity. We are troubled by an alarming trend in criminal indictments that ignore mens rea, that erode fundamental freedoms to political speech and association, and that invite overcriminalization.[1]

Advancement Project Education Fund ("Advancement Project") is a next generation, multi-racial civil rights non-profit organization based in Washington, D.C. Rooted in the struggles for equality and justice and the belief in the genius of ordinary people to achieve lasting and permanent change, Advancement Project provides strategy development, research, litigation, trainings and convenings, and communications support to local and national racial justice and movement partners across the U.S. Formed in 1999, Advancement Project is acutely aware of the state repression that racial justice activists have increasingly faced for decades.

The Center for Constitutional Rights is a national, non-profit legal, educational, and advocacy organization dedicated to advancing and protecting the rights guaranteed by the United States Constitution and international law. Founded

[1] Amici are grateful to Boston University School of Law students Preetham Chippada and Alexis Luckett for their research and writing contributions to this amicus brief through the BU Law Antiracism and Community Lawyering Practicum.

in 1966 to represent civil rights activists in the South, the Center for Constitutional Rights has a long history of challenging the criminalization of protest and dissent.

The Fred T. Korematsu Center for Law and Equality ("Korematsu Center") is a non-profit organization based at University of California, Irvine School of Law.[2] The Korematsu Center works to advance justice through research, advocacy, and education. Inspired by the legacy of Fred Korematsu, who defied military orders during World War II that ultimately led to the unlawful incarceration of over 120,000 Japanese Americans, the Korematsu Center works to advance justice for all. The Korematsu Center is keenly aware of the dangers posed when the government sweeps with too broad a brush and presumes guilt by association.

The following law professors are experts in criminal law, criminal procedure, constitutional law, or related subjects and are deeply concerned that an overbroad reading of Georgia's RICO statute will lead to overcriminalization, selective enforcement, and First Amendment violations:[3]

1. Amber Baylor, Clinical Professor of Law, Columbia Law School
2. Aliza Hochman Bloom, Assistant Professor of Law, Northeastern School of Law
3. Valena Elizabeth Beety, Robert H. McKinney Professor of Law, Indiana University Maurer School of Law

[2] The Korematsu Center does not, in this brief or otherwise, represent the official views of the University of California, Irvine.

[3] These law professors' signatures represent their own views, not that of their respective institutions.

4. Sandra Babcock, Clinical Professor, Cornell Law School
5. Kristen Bell, Assistant Professor, University of Oregon School of Law
6. Donna Coker, Professor of Law, Unviersity of Miami School of Law
7. Nina Farnia, Assistant Professor of Law, Albany Law School
8. Chester Eduardo Fernández, Assistant Professor of Law, Quinnipiac University School of Law
9. Cynthia Godsoe, Professor of Law, Brooklyn Law School
10. Sarah Gottlieb, Assistant Clinical Professor of Law, Washington and Lee University School of Law
11. Alexis Hoag-Fordjour, Associate Professor of Law, Brooklyn Law School
12. Christopher Lau, Clinical Associate Professor, University of Wisconsin Law School
13. Evelyn Malave, Assistant Professor, St. John's University School of Law
14. Jamelia N. Morgan, Professor of Law, Northwestern University School of Law
15. Vincent M. Southerland, Associate Professor of Clinical Law, New York University School of Law
16. Sarah Sherman-Stokes, Clinical Associate Professor, Boston University School of Law
17. Jocelyn Simonson, Professor of Law, Brooklyn Law School
18. Liliana Zaragoza, Associate Professor of Clinical Law, University of Minnesota Law School

SUMMARY OF ARGUMENT

The State has levied racketeering charges against 61 individuals by characterizing years of diverse protest activity as a criminal enterprise. According to the indictment, a protest responding to the police murder of George Floyd in 2020 is part and parcel of a criminal enterprise aimed at opposing the construction of a police training facility years later—even though plans for that facility were not announced until 2021. The supposed criminal enterprise underlying these and other assorted acts is Defend the Atlanta Forest (DTAF), a movement with goals ranging from protecting the environment to condemning police violence. Rather than pursue clearly defined criminal charges regarding distinct criminal acts, the State casts a wide net of RICO liability by manufacturing a common purpose out of 61 defendants' loosely connected social and political beliefs.

This indictment is both deficient and dangerous. The indictment fails to allege that DTAF is a criminal enterprise or that the defendants intended to associate with DTAF in order advance the goals of a criminal enterprise. The indictment's lack of precision is reckless. It reaches conduct that lies far beyond what Georgia's RICO statute was intended to prohibit, including conduct protected by the First Amendment. The State's untenably vague and overbroad use of RICO invites selective enforcement and threatens the associational freedoms of all who criticize their government's policies.

The defendants' demurrers raise not only pleading defects but also potential violations of the defendants constitutional rights. Permitting the State to proceed to trial with this indictment would raise constitutional concerns that must be avoided. For these reasons, we urge this court to construe the RICO statute narrowly to avoid statutory and constitutional infirmities, and to dismiss the indictment.

ARGUMENT

This indictment relies on the assumption that shared opposition to a police training facility—or even a general interest in anarchism, environmentalism, or deterring police violence—are sufficient to establish intent to agree to further a criminal enterprise's pattern of racketeering activity, intent to associate with that enterprise, and actual agreement to be part of that enterprise. If this were true, Georgia's RICO statute would run afoul of the First Amendment. A narrowing construction of the statute is required to avoid this constitutional conflict.

One of the many problems with the Georgia Attorney General's indictment is that the State neither disentangles the legal and illegal activities of those associated with DTAF nor shows that people who engaged in legal activity intended to agree to or further any illegal activity. Notably, the RICO statute itself states that it is not intended to apply to "isolated incidents of misdemeanor conduct or acts of civil disobedience." O.C.G.A. § 16-14-2. Furthermore, an unlawful overt act does not, on its own, establish a RICO conspiracy; instead, the indictment must allege that these

overt acts are tied to a criminal enterprise. The State's ill-defined criminal enterprise coupled with its failure to explain how the defendants acted in furtherance of that alleged enterprise are deficiencies that warrant a dismissal. *See State v. Mondor*, 306 Ga. 338, 341 (2019) (holding that an indictment under O.C.G.A. § 16-14-4 that "fails to allege all the essential elements of the crime or crimes charged, including the required mens rea, [] violates due process, is void, and cannot withstand a general demurrer").

Moreover, the indictment implicates constitutionally protected activities of those associated with DTAF and thus raises serious First Amendment concerns that should be avoided through narrow construction of the RICO statute. *See Rodriguez v. State*, 284 Ga. 803, 807 (2009) (avoiding constitutional challenges to Georgia's anti-gang statute by interpreting the statute to require more than mere association with a gang, including that the defendant specifically intended to further its criminal purposes). Based on the logic of the indictment, a person who joins an association with general political goals and engages in lawful activity as part of that association may face RICO conspiracy liability for the acts of others who are part of that association. The principle of constitutional avoidance supports the dismissal of the indictment here, which threatens our speech and associational freedoms. *See Barnhill v. Alford*, 315 Ga. 304, 311 (2022) (quotation omitted) (recognizing that

"every reasonable construction must be resorted to in order to save a statute from unconstitutionality").

I. The indictment fails to allege that Defend the Atlanta Forest is a criminal enterprise.

One fatal flaw of this RICO indictment is that it fails to allege that DTAF is a criminal enterprise: it establishes no common purpose of the supposed enterprise, or that any such purpose was criminal in nature. Accordingly, the indictment must be dismissed. *Mondor*, 306 Ga. at 341.

First, the indictment fails to allege that DTAF shares a common purpose, a definitional feature of an enterprise. *See Chancey v. State*, 256 Ga. 415, 417 (1986) (describing an enterprise as a group of people associated together for a common purpose of engaging in a course of conduct). The indictment claims that the purported enterprise began in 2020 following the murder of George Floyd,[4] and that the enterprise's purpose was "to occupy . . . forested acres in Dekalb County . . . for the purpose of preventing the construction of the Atlanta Public Safety Training Center."[5] But in 2020, the City of Atlanta had not even entered into the ground lease agreement with the Atlanta Police Foundation to build the training center.[6] By sweeping in protest activity—lawful or otherwise—that preceded the supposed

[4] Indictment at 30-32.

[5] Indictment at 24.

[6] *See* City of Atlanta, Ordinance 21-O-0367, https://tinyurl.com/4rdp2nwe.

common purpose of the criminal enterprise, the indictment reveals its own untenability: it alleges overt acts in furtherance of the enterprise that preceded the supposed common purpose of the enterprise.[7] Thus, the allegations, even if true, would not establish that defendants intended to associate and support the activities of a criminal enterprise.

Second, even if the varying aims articulated in the indictment did amount to a common purpose—which they do not—the indictment fails to allege that this purpose was criminal in nature. The indictment identifies the DTAF's aims as include "collectivism, mutualism/mutual aid, and social solidarity."[8] The indictment describes DTAF as an "autonomous movement that uses *advocacy* and direct action to stop the 'forest [from being] bulldozed in favor of police."[9] (emphasis added). While the document attributes acts of vandalism, arson, and property destruction to DTAF, the indictment does not allege that these acts were the common purpose of DTAF. On the contrary, by the State's own characterization, DTAF's goals and many of its activities are legal. The indictment fails to establish that the lawful activities and the unlawful activities that it attributes to DTAF all advanced a

[7] Indictment at 49 (alleging overt acts from 2020).

[8] Indictment at 25.

[9] Indictment at 34.

criminal objective. As a result, association with DTAF cannot be treated the same as association with a criminal enterprise.

Resting its allegations about DTAF's supposed common purpose on vague and generalized descriptions of "militant" and "anarchist" ideologies, the State falls short of its obligation to sufficiently allege a criminal enterprise—an essential element of a RICO charge. This deficiency—and the constitutional concerns it raises, *see infra* Part III—subjects the indictment to a general demurrer. *See Mondor*, 306 Ga. at 341.

II. The indictment fails to allege that defendants intended to join a criminal enterprise or further a pattern of racketeering activity.

Not only does the indictment fail to establish a criminal enterprise, but it also fails to establish defendants' intent to join a criminal enterprise in order to advance a pattern of racketeering activity. The mens rea elements of a RICO conspiracy charge are intent to conspire (reach an agreement) and intent to conduct racketeering activities through a criminal enterprise. *See* O.C.G.A. § 16-14-4. The actus reus element is the commission of an overt act to further the conspiracy or endeavor. *Id*. Because the indictment fails to allege that the defendants intended to conspire or endeavor to conduct a pattern of racketeering activities, it omits an essential element of a RICO charge, and cannot withstand a demurrer. *See Mondor*, 306 Ga. at 341.

Knowledge is a prerequisite for intent. Therefore, a defendant's intent to conspire and intent to participate in a pattern of racketeering activity requires the

defendant to have understood the general nature of the alleged criminal enterprise beyond their individual alleged acts. *See United States v. Viola*, 35 F.3d 37, 44 (2d Cir. 1994) (finding insufficient knowledge even though defendant agreed on two occasions to sell goods he knew were stolen, because the state failed to show defendant knew of additional transactions or would logically suspect he was part of a larger enterprise). An indictment such as this one, lacking any indication of defendants' knowledge of the supposed criminal enterprise, is missing an essential component of the requisite mens rea for RICO liability. *See id.* (citing *United States v. Falcone*, 311 U.S. 205, 210-11 (1940) ("[A] person cannot be convicted of agreeing to participate in a conspiracy if [they have] no knowledge that the conspiracy even exists.").[10]

When considering the indictment's allegations as to defendants' overt acts, this Court should determine whether those acts establish each defendant's intent to further a pattern of racketeering activity. The demurrers filed by Brooke Courtemanche, Sonali Gupta, Marlon Kautz, Savannah Patterson, and Adele Maclean detail the indictment's failures to allege the defendants' intent to associate with and intent to further a criminal enterprise.

[10] Georgia courts have repeatedly looked to federal court opinions interpreting the federal RICO statute as persuasive authorities in interpreting the Georgia RICO statute. *See, e.g., Williams Gen. Corp. v. Stone*, 279 Ga. 428, 430 (2005).

The indictment relies on speculative, untenable connections that fail to establish defendants' requisite mens rea to support a RICO conspiracy charge. For example, the indictment alleges that Sonali Gupta threw objects and a Molotov cocktail at the Georgia Patrol headquarters on around July 5, 2020,[11] nearly a year before the City of Atlanta entered an agreement to build the police training facility.[12] The indictment fails to provide any reason Gupta would have known about the police training facility, or any other explanation as to why this action would be connected to the alleged common purpose of DTAF—to oppose the construction of the police training facility[13]—given that the supposed purpose did not arise until several months later. Indeed, the indictment does not allege that Gupta communicated with anyone affiliated with DTAF in relation to the July 2020 event. The indictment goes on to allege that Gupta received $800 from the Network for Strong Communities three years later, in 2023,[14] but provides no connection between this funding, Gupta's acts in 2020, or how this furthers the alleged goals of the purported conspiracy. Similarly, the indictment does not explain how Brooke Courtemanche's

[11] Indictment at 49.

[12] *See* City of Atlanta, Ordinance 21-O-0367, https://tinyurl.com/4rdp2nwe.

[13] *See* Indictment at 24 ("The purpose of Defend the Atlanta Forest is to occupy of parts or all of 381 forested acres in DeKalb County, Georgia that is owned by Atlanta Police Foundation and leased by the City of Atlanta for the purpose of preventing the construction of the Atlanta Public Safety Training Center.").

[14] Indictment at 79, 89.

alleged acts of vandalism at Ebenezer Baptist Church[15] furthered a criminal enterprise ostensibly concerning a police training facility miles away.

The indictment also fails to allege how Courtemanche's receipt of reimbursement for forest kitchen materials, camping supplies, food, tents, tarps, and the like,[16] or administrative work by Marlon Kautz, Savannah Patterson, and Adele Maclean on behalf of Network for Strong Communities,[17] show intent to advance a pattern of racketeering activity. The indictment describes the Network for Strong Communities as a nonprofit that provides community support including reimbursements for protest materials and a bail fund.[18] Neither giving nor receiving reimbursement suggest the requisite intent to conspire to further a pattern of racketeering activity. Indeed, the indictment states that "reimbursement operates in the same way that a traditional business conducts reimbursement" and that DTAF provides "monetary, emotional, and personal support" to protestors,[19] suggesting a legitimate desire to further a political cause, not a criminal enterprise. The indictment concedes that the bail fund's primary purpose is to support other like-minded

[15] Indictment at 72.

[16] Indictment at 61-66, 68-70.

[17] Indictment at 49-88.

[18] Indictment at 39.

[19] Indictment at 29, 41.

persons.[20] Paying bail is protected activity.[21] Thus, paying bail does not on its face establish the mens rea required for RICO conspiracy liability.

Finally, the indictment alleges several purported overt acts against Kautz, MacLean, and Patterson, "along with their unindicted co-conspirators that are unknown to the Grand Jury" for various postings on scenes.noblogs.org.[22] The referenced posts, which the indictment fails to attribute to any specific author, include, for example, calls for a "week of action."[23] The defendants' alleged blog posts do not establish intent to further a pattern of racketeering activity. Repeatedly, the indictment fails to meet the basic requirements for any valid charging document: establishing harmful acts and connecting those to a guilty purpose.

Critically, "[t]he law does not authorize a finding that conspiracy exists merely because of some speculative suspicion." *Duvall v. Cronic*, 347 Ga. App. 763, 774 (2018). Although Georgia's RICO statute is written broadly so that the state can bring in many sources of evidence and combat "the increasing sophistication of various criminal elements," O.C.G.A. § 16-14-2 (a), that breadth should not be leveraged to criminalize associations that bear no resemblance to a criminal

[20] Indictment at 39-40.

[21] *See* Order Granting Preliminary Injunction, Barred Business et al v. Kemp, 24-cv-2744, Dkt. No. 38 at (July 12, 2024) (finding that "Plaintiffs' work paying cash bail is expressive conduct, and accordingly it receives First Amendment protection").

[22] *See* Indictment at 51-61, 78-88.

[23] Indictment at 51, 54.

conspiracy. Where, as here, an indictment fails to allege a nexus between the alleged overt acts and the affairs of the enterprise, the indictment is deficient. *See Kimbrough*, 300 Ga. at 882-84 (sustaining special demurrers where indictment did not explain nexus between unlawfully obtaining Oxycodone and the business of the enterprise, did not explain how defendants were associated with the enterprise, and did not allege whether the enterprise was illicit); *Dorsey v. State*, 279 Ga. 534, 535-36, 540 (2005) (finding sufficient nexus where the state showed that defendant sheriff used his position for illicit profit making activities and furthered that scheme through overt acts included bribery, solicitation of murder, murder, witness tampering). Since the alleged overt acts here do not show that the defendants had knowledge of their role in a larger illicit enterprise, the indictment must be dismissed.

III. The State's proposed interpretation of RICO violates the First Amendment and should be rejected pursuant to the doctrine of constitutional avoidance.

This Court should reject the State's proposed reading of the RICO statute, which would criminalize not only lawful activity, but activity protected by the First Amendment. As the U.S. Supreme Court recognized in *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 933-34 (1982), the right to speak and associate freely does not lose constitutional protection even if some individuals in an alleged group

may have participated in unlawful conduct.[24] The First Amendment protects the right to freedom of speech and association, whether the government agrees with the expression or not. Moreover, the practice of persons sharing common views banding together to achieve a common end is deeply embedded in the American political process. Such group association enhances effective advocacy in a democracy by shielding dissident expression from suppression. *Ams. For Prosperity Found. v. Bonta*, 594 U.S. 595, 606 (2021); *NAACP v. Ala. Ex rel. Patterson*, 357 U.S. 449, 460-62 (1958).

The alleged unlawful activities of a few do not convert their associates' lawful protests into objects of a RICO conspiracy. *See Claiborne*, 458 U.S at 933-34*; see also generally White v. State*, 903 S.E.2d 891, 917 (2024) (Peterson, J., concurring) (cautioning that, although indictment alleged a RICO conspiracy violation, "aggressive use of the RICO statute could pose potential constitutional problems" regarding the right to a fair trial free from propensity evidence and that "the more aggressively the State uses RICO's breadth, the more concern arises about conflict

[24] The U.S. Supreme Court recently made clear that the First Amendment prohibits using "an objective standard" like negligence for punishing speech. *Counterman v. Colorado*, 600 U. S. 66, 78-79, n.5 (2023). Instead, the Court explained, "the First Amendment precludes punishment [for incitement], whether civil or criminal, unless the speaker's words were 'intended' (not just likely) to produce imminent disorder." *Id*. at 76; *see also McKesson v. Doe*, 601 U.S. ___(2024) (Sotomayor, J.) (denying certiorari as to the question of whether *Claiborne* forecloses negligent-protest liability, noting that certiorari may be denied where "the law is not in need of further clarification" and observing that although the Court of Appeals deciding *McKesson* "did not have the benefit of this Court's recent decision in *Counterman* when it issued its opinion, the lower courts now do").

between the RICO statute and the accused's constitutional right to a fair trial"). The State must act with surgical precision when it alleges criminal liability for associating with a group that pursues both lawful and unlawful activities. Without such precision, it risks punishing those who engage in the lawful and constitutionally protected aims of the group. *See Noto v. United States*, 367 U.S. 290, 299-300 (1961). Taking the reasoning of the indictment to its logical conclusion, intent to associate with any group would suffice to make a member of that association liable for the criminal acts of all other members of the association. *See Scales v. United States*, 367 U.S. 203, 229 (1961) (noting that a "blanket prohibition of association with a group having both legal and illegal aims . . . would indeed be a real danger that legitimate political expression or association would be impaired").

Further, the State's interpretation of the RICO statute results in impermissible vagueness, thereby increasing the risk of selective enforcement. *See, e.g., Gentile v. State Bar of Nev*., 501 U.S. 1030, 1050 (1991) (holding that rule as interpreted was void for vagueness and noting that vague regulations are prohibited in part because of "the need to eliminate the impermissible risk of discriminatory enforcement, for history shows that speech is suppressed when either the speaker or the message is critical of those who enforce the law"); *Smith v. Goguen*, 415 U.S. 566, 573 (1974) (finding a statute void for vagueness where it reached protected expression and was "unaided by a narrowing state court interpretation"); *Gooding v. Wilson*, 405 U.S.

518, 522 (1972) (noting that "statute[s] must be carefully drawn or be *authoritatively construed* to punish only unprotected speech and not be susceptible of application to protected expression") (emphasis added).

In sum, joining a movement with general political goals does not by itself establish intent to further a pattern of racketeering activity and using protected expressive activity—like paying bail or engaging in acts of solidarity—as the basis for inferring conspiratorial intent and for designating an illegal enterprise will inevitably lead to overcriminalization and the infringement of our speech and associational freedoms. The principle of constitutional avoidance supports the dismissal of the indictment here, which would broaden the scope of Georgia's RICO statute beyond constitutional bounds. *See Barnhill*, 315 Ga. at 311.

CONCLUSION

For the foregoing reasons, Amici respectfully request that this Court grant defendants' demurrers and dismiss the indictment.

Respectfully submitted, this 10th day of October, 2024.

/s/ Andrew Fleischman
Andrew Fleischman
Sessions & Fleischman, LLC
3155 Roswell Rd., Ste. 220
Atlanta, GA 30305
470- 225-7710
andrew@thesessionslawfirm.com

Counsel for Amici

/s/ Caitlin Glass
Caitlin Glass (pro hac pending)
ANTIRACISM AND COMMUNITY LAWYERING PRACTICUM
Boston University School of Law
765 Commonwealth Avenue
Boston, MA 02215
617-353-3131
glassc@bu.edu
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/s/ Andrew Fleischman
Andrew Fleischman
Sessions & Fleischman, LLC
3155 Roswell Rd., Ste. 220
Atlanta, GA 30305
470- 225-7710
andrew@thesessionslawfirm.com

Counsel for Amici